

application. The divisional nature was noted on the original transmittal sheet and the filing receipt was corrected to reflect this priority on 09 May 2000. This priority is relevant because it obviates many of the cited references.

Applicant further notes that the Patent Office apparently failed to give effect to the second preliminary amendment filed concurrently with the application. The first preliminary amendment is dated 24 October 1997 and is signed by Howard MacCord. This preliminary amendment adds a figure and claims 36-55. The second preliminary amendment is dated 08 February 2000 and is signed by Steve Terranova. This amendment canceled claims 1-28, and 36-48 without prejudice. This amendment was performed as explained therein to pursue the non-allowed claims of Group III, namely claims 29-35 and 49-55. This amendment was given effect by the Patent Office for the purpose of calculating claims as evidenced by the filing receipt of 09 May 2000 which indicates that only 14 claims are being pursued.

Claims 29, 49-51, and 54 were rejected under 35 U.S.C. § 102(b) or (e) as being anticipated by Warn et al. (5,831,861) or Comdex or Cisco.

Claims 30-35, 52, 53, and 55 were rejected under 35 U.S.C. § 102(e) as being anticipated by Comdex or Cisco.

Availability of the references under § 102

When the proper priority is given the present case, neither the Comdex or the Cisco articles are available as prior art, and neither would ever be available under 102(e) which requires that “the invention was described *in a patent granted on an application for patent filed by another. . . .*” Since both Comdex and Cisco were periodical publications, not patents, § 102(e) is inappropriate. Further, the dates afforded them are

11/99 and 12/99 respectfully, both well after the priority date of 18 July 1997 of the present application. Thus, these references do not qualify as prior art under § 102(b). The Warn et al. reference was filed 12 Jul 1996 and issued 03 November 1998. The publication/issuance date is after the present application's priority date and at best the reference may be available under § 102(e), a point which Applicant does not concede.

In light of the unavailability of Comdex or Cisco under either §§ 102(b) or 102(e), claims 30-35, 52, 53, and 55 are allowable. Applicant reserves the right to address the Comdex and Cisco references further in the event that the Patent Office maintains this rejection. Failure to do so now is not an admission as to the contents or merits of the substance of the rejection.

Applicant now turns to the merits of the rejection under Warn et al. The Patent Office, in an anticipation rejection, must show that the cited reference contains all of the claimed elements arranged in the manner claimed. In so doing, the Patent Office is entitled to construe claim terms according to their broadest reasonable interpretation unless a specific definition is provided by the Applicant. An important, and unfortunately, frequently overlooked term in this standard is reasonable. *In re Marosi*, 710 F.2d 799 (Fed. Cir. 1983); MPEP § 2111. When an interpretation is not reasonable, the rejection fails. In the present case, the Patent Office misconstrues several terms in attempting to shoehorn the reference into position for an anticipation rejection.

Initially, claim 29 states "providing an *interactive graphical user interface* at a fueling position on a fuel dispenser. . . ." The Patent Office claims that Warn et al. discloses such at Fig. 1 or 2 wherein the I/O ports are interface devices. Ignoring for the moment the truth of that statement, there is still nothing that shows *an interactive*

graphical user interface. The entire focus of the Warn et al. reference is directed to controlling older mechanical fuel dispensers with a controller that can also control newer electronic or smart pumps. The I/O ports of Figs. 1 and 2 are not in the fuel dispenser, nor are they even remotely interactive graphical user interfaces. For this reason alone the rejection of claim 29 is inappropriate and must be withdrawn. The problem compounds when the rest of the claim is analyzed. Since there is no interactive graphical user interface, the reference cannot “display[] information to the customer at the graphical user interface. . . .” Since the information is not displayed to the customer, the customer cannot be “prompt[ed] to select a service with the displayed information. . . .” and so on.

The rejection of claim 49 suffers similar defects. The claim states “providing an interactive graphical user interface at a fueling position on a fuel dispenser. . . .” As previously explained, the Warn et al. reference does no such thing. The other objections raised to the rejection of claim 29 are equally applicable and will not be repeated.

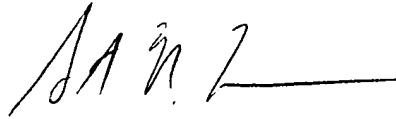
Applicant further reserves the right to address any other elements and/or rejections with respect to Warn et al. and failure to do so at the present time is not to be construed as an admission by Applicant.

Claims 50, 51, and 54 depend from allowable claim 49, and thus, are likewise in a condition for allowance.

The rejection of the pending claims relies on references that are unavailable as prior art and/or misconstrues the remaining references to the point of not being reasonable and thus, the claims should be allowed as filed.

Respectfully submitted,

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